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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/733,826      | 12/11/2003  | Steven Handling Farrell | 9460                | 2167             |

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THE PROCTER & GAMBLE COMPANY  
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EXAMINER

MAHAFKEY, KELLY J

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/733,826 | <b>Applicant(s)</b><br>FARRELL ET AL. |  |
|                              | <b>Examiner</b><br>Kelly Mahafkey    | <b>Art Unit</b><br>1761               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/29/04</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biogaia (WO 99/19221) in view of Fox (US 2001/0018082).

Biogaia teaches of a beverage modification system comprising:

- a) a container containing a fruit-flavored liquid beverage composition
- b) a cap comprising a pouch and a pouch opener (a cutter);
- c) a modification composition retained by the pouch;

wherein when the cap is secured onto an opening of the container containing the liquid beverage composition and when the pouch opener is activated, the modification composition is released from the pouch and mixes with the liquid beverage composition to produce a modified beverage composition. Biogaia teaches that the beverage composition can be milk (i.e. a cloudy beverage), juice, water, or other liquid products. Biogaia teaches that the modification composition can be microbial cultures, carbonation tablets, vitamins, or other components desired separate from the beverage composition. Biogaia teaches the container is an oxygen-barrier package, and is a bottle. Refer specifically to Abstract, Page 2 lines 11-20 and 31, Page 3 lines 1 and 31,

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Page 4 lines 1-15, Page 5 all, Page 6 lines 11-14, Column 7 lines 16-31, and Figures 7 and 10.

Biogaia is silent to the modified beverage composition (i.e. the beverage in addition to the modification composition) would have a different color and flavor than the liquid beverage composition.

Fox teaches of effervescent calcium supplements for water, milk, fruit juices, or other liquid beverages. Fox teaches the beverage modification system consists of powders or tablets. Fox teaches that the beverage modification system comprises:

A coloring agent

About 0.05% to about 20% (i.e. including about 3% to about 10% and 1% to about 15%) of a flavoring agent

Vitamins and minerals

Effervescence

Thus, because the modification system includes coloring and flavoring, the modified beverage composition (i.e. the beverage in addition to the modification composition) would have a different color and flavor than the liquid beverage composition. Refer specifically to Abstract and paragraphs 0002, 0008, 0013, 0047, 0051-0053, 0057, 0060, and Example II. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the beverage modification composition (i.e. including powders or tablets comprising: a coloring agent, about 0.05% to about 20%, vitamins and minerals, and effervescence) as taught by Fox in the beverage modification system as taught by Biogaia. Because Biogaia teaches of a beverage

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modification system for water, milk, juices, and other liquids but does not specifically teach of a modification composition for those beverages one would have been motivated to look to beverage modification compositions of the art, such as the one taught by Fox. One would have been further motivated to use the beverage modification system as taught by Fox in order to gain the benefit of the modification composition, such as a bioavailable source of calcium that is pleasing to the senses (Fox paragraphs 0002-0010). Because Biogaia teaches of a beverage modification system for water, milk, juices, and other liquids and because Fox teaches of a modification composition for water, milk, juices, and other liquids one would have a reasonable expectation of success from the combination.

Claims 2-8 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biogaia (WO 99/19221) in view of Fox (US 2001/0018082) as applied to claim 1 above, further in view of Fischer (US 5433965).

Biogaia in view of Fox teaches of a beverage modification system as described above, however, are silent to the specific liquid beverage composition, the modification composition as including a specific amount of coloring, the cap further comprises a removable retaining ring, and to the amount of the beverage modification composition in relation to the liquid beverage composition.

Regarding the liquid beverage composition, Fischer teaches of a liquid beverage composition comprises:

At least 0.001%, typically about 0.01% to about 3% of a flavoring agent

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A coloring agent

About 3% to about 60%, preferably about 5% to about 25% fruit juice

Fischer teaches that clouding agents, such as flavor oils can be included in the beverage composition. Refer specifically to abstract, Column 10 lines 17 through Column 11 lines 36, Column 15 lines 10-43. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the beverage as taught by Fischer (i.e. including at least 0.001% flavoring, a coloring agent, about 3% to about 60% fruit juice, and clouding agents) in the beverage modification system as taught by Biogaia. Because Biogaia teaches of a beverage modification system for water, milk, juices, and other liquids but does not teach of a specific beverage composition, one would have been motivated to look to the beverage compositions of the art, such as the one taught by Fischer. One would have been further motivated to use the beverage as taught by Fischer in order to gain the benefits of the beverage, such as, a reduced calorie beverage with improved flavor (Fischer, Abstract). Because Biogaia teaches of a beverage modification system for water, milk, juices, and other liquids; because Fischer teaches of a juice beverage to which supplemental vitamins and minerals can be added; and because Fox teaches of a modification composition for water, milk, juices, and other liquids, one would have a reasonable expectation of success from the combination. Further, regarding an amount of coloring agent in the beverage composition as recited in claims 5, 7, and 13, Fischer teaches of including minor amounts of coloring in the beverage composition. It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to include a coloring in the modification composition depending on the desired intensity of the coloring.

Regarding the amount of the coloring agent in the modification composition as recited in claims 4, 12, and 16, Fox teaches of including minor amounts of coloring in the beverage modification composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a coloring in the modification composition depending on the desired intensity of the coloring.

Regarding the amount of the beverage modification composition in relation to the liquid beverage composition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a desired amount of the modification composition in the beverage composition depending on the desired intensity of effects from the modification composition.

Regarding the addition of a removable retainable ring, it was known in the art at the time the invention was made to include removable retaining rings on beverage containers for the prevention of premature openings (i.e. such as on commercial milk containers). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a removable retaining ring on the beverage container in order to prevent the premature opening of the container.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Searle (WO 00/35758) in view of Fox (US 2001/0018082).

Searle teaches of a beverage modification system comprising:

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- a) a container containing a liquid beverage composition
- b) a cap comprising a pouch and a pouch opener (a plunger);
- c) a modification composition retained by the pouch;

wherein when the cap is secured onto an opening of the container containing the liquid beverage composition and when the pouch opener is activated, the modification composition is released from the pouch and mixes with the liquid beverage composition to produce a modified beverage composition. Searle teaches that the beverage composition can be water, or other liquid products. Searle teaches the container is an oxygen-barrier package, and is a bottle. Searle teaches that the beverage modification system consists of powders, liquids, and other fluids (claim 3). Refer specifically to Abstract, Page 1 lines 31 through Page 2 lines 7, Page 9 line 1, Page 10 lines 1-5, and Figures 1-4.

Searle is silent to the modified beverage composition (i.e. the beverage in addition to the modification composition) would have a different color and flavor than the liquid beverage composition.

Fox teaches of effervescent calcium supplements for water, milk, fruit juices, or other liquid beverages. Fox teaches the beverage modification system consists of powders or tablets. Fox teaches that the beverage modification system comprises:

A coloring agent

About 0.05% to about 20% (i.e. including about 3% to about 10% and 1% to about 15%) of a flavoring agent

Vitamins and minerals



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### Effervescence

Thus, because the modification system includes coloring and flavoring, the modified beverage composition (i.e. the beverage in addition to the modification composition) would have a different color and flavor than the liquid beverage composition. Refer specifically to Abstract and paragraphs 0002, 0008, 0013, 0047, 0051-0053, 0057, 0060, and Example II. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the beverage modification composition (i.e. including powders or tablets comprising: a coloring agent, about 0.05% to about 20%, vitamins and minerals, and effervescence) as taught by Fox in the beverage modification system as taught by Searle. Because Searle teaches of a beverage modification system for liquids but does not specifically teach of a modification composition for those beverages one would have been motivated to look to beverage modification compositions of the art, such as the one taught by Fox. One would have been further motivated to use the composition as taught by Fox so in order to gain the benefit of the modification composition, such as a bioavailable source of calcium that is pleasing to the senses (Fox paragraphs 0002-0010). Because Searle teaches of a beverage modification system for liquids and because Fox teaches of a modification composition for liquids one would have a reasonable expectation of success from the combination.

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Claims 2-7 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Searle (WO 00/35758) in view of Fox (US 2001/0018082) as applied to claim 1 above, further in view of Fischer (US 5433965).

Searle in view of Fox teaches of a beverage modification system as described above, however, are silent to the specific liquid beverage composition, the modification composition as including a specific amount of coloring, the cap further comprises a removable retaining ring, and to the amount of the beverage modification composition in relation to the liquid beverage composition.

Regarding the liquid beverage composition, Fischer teaches of a liquid beverage composition comprises:

At least 0.001%, typically about 0.01% to about 3% of a flavoring agent

A coloring agent

About 3% to about 60%, preferably about 5% to about 25% fruit juice

Fischer teaches that clouding agents, such as flavor oils can be included in the beverage composition. Refer specifically to abstract, Column 10 lines 17 through Column 11 lines 36, Column 15 lines 10-43. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the beverage as taught by Fischer (i.e. including at least 0.001% flavoring, a coloring agent, about 3% to about 60% fruit juice, and clouding agents) in the beverage modification system as taught by Searle. Because Searle teaches of a beverage modification system for liquids but does not teach of a specific liquid composition, one would have been motivated to look to the liquid compositions of the art, such as the one taught by Fischer. One would

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have been further motivated to use the beverage as taught by Fischer in order to gain the benefits of the beverage, such as, a reduced calorie beverage with improved flavor (Fischer, Abstract). Because Searle teaches of a beverage modification system liquids; because Fischer teaches of a liquid to which supplemental vitamins and minerals can be added; and because Fox teaches of a modification composition for liquids, one would have a reasonable expectation of success from the combination. Further, regarding an amount of coloring agent in the beverage composition as recited in claims 5, 7, and 13, Fischer teaches of including minor amounts of coloring in the beverage composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a coloring in the modification composition depending on the desired intensity of the coloring.

Regarding the amount of the coloring agent in the modification composition as recited in claims 4, 12, and 16, Fox teaches of including minor amounts of coloring in the beverage modification composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a coloring in the modification composition depending on the desired intensity of the coloring.

Regarding the amount of the beverage modification composition in relation to the liquid beverage composition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a desired amount of the modification composition in the beverage composition depending on the desired intensity of effects from the modification composition.

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Regarding the addition of a removable retainable ring, it was known in the art at the time the invention was made to include removable retaining rings on beverage containers for the prevention of premature openings (i.e. such as on commercial milk containers). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a removable retaining ring on the beverage container in order to prevent the premature opening of the container.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
KEITH HENDRICKS  
PRIMARY EXAMINER

  
Kelly Mahafkey  
AU 1761